

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 Bryan Edward Hiyas,

5 Plaintiff,

6 v.

7 Trans Union, et al.

8 Defendant.
9

Case No. 2:24-cv-00388-APG-BNW

Order

10 On March 1, 2024, this Court granted Plaintiff's request to proceed *in forma pauperis* and
11 screened his complaint. ECF No. 3. This Court denied certain claims, noting the complaint was
12 devoid of factual allegations, and gave Plaintiff a deadline of April 1, 2024, to file an amended
13 complaint. In addition, the Court recommended that his claims under Title 18 of the United States
14 Code be dismissed with prejudice. Since then, the District Judge adopted the Report and
15 Recommendation and dismissed the claims under Title 18 of the United States Code with
16 prejudice. ECF No. 6. The Court now screens Plaintiff's First Amended Complaint, filed on
17 March 13, 2024.

18 **I. ANALYSIS**

19 **A. Screening standard**

20 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
21 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
22 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be
23 granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
24 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for
25 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
26 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient
27 factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft*
28 *v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only

1 dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in support of
2 his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir.
3 2014) (*quoting Iqbal*, 556 U.S. at 678).

4 In considering whether the complaint is sufficient to state a claim, all allegations of
5 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar*
6 *Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).
7 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
8 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.
9 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*
10 Unless it is clear the complaint’s deficiencies could not be cured through amendment, a pro se
11 plaintiff should be given leave to amend the complaint with notice regarding the complaint’s
12 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 **B. Screening the complaint**

14 Once again, Plaintiff’s complaint is void of any factual allegations. *See* ECF No. 1-1. He
15 names three defendants—Experian, Equifax, and Trans Union—and alleges the same facts he did
16 in his original complaint: that Defendants “unlawfully used Bryan Edward Aguilar Hiyas CR
17 without written consent.” *Id.* In addition, he alleges “defamation on credit report with negative
18 reports.” *Id.* The cause of action he lists is under Title 18 of the United States Code. *Id.* Lastly, he
19 seeks damages in excess of a million dollars. *Id.*

20 As explained before, Plaintiff does not have a private right of action to bring claims under
21 Title 18 of the United States Code. *Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir.
22 2006) (no private right of action for violation of criminal statutes).

23 In addition, even liberally construing Plaintiff’s amended complaint, it does not state
24 sufficient factual allegations about the underlying dispute and the Defendants’ role in the matter
25 to state a claim. This has been explained to Plaintiff previously—yet his amended complaint is
26 almost identical to the original one.

27 The Court will give him *one last chance* to amend his complaint. He cannot alleges a
28 violation under Title 18 of the United States Code. To the extent he believes he has another claim

1 against these Defendants, he must provide the facts to support his allegations and explain the
2 reason why he believes each Defendant is liable. Although the Federal Rules of Civil Procedure
3 adopt a flexible pleading standard, Plaintiff still must give each defendant fair notice of his claims
4 against it and of Plaintiff's entitlement to relief. To the extent Plaintiff is alleging constitutional
5 violations, he must explain how each of the Defendants violated the Constitution.

6 If Plaintiff chooses to file an amended complaint, the document must be titled "Second
7 Amended Complaint." The Second Amended Complaint must contain a short and plain statement
8 describing the underlying case and the defendants' involvement in the case. *See* Fed. R. Civ. P.
9 8(a)(2). Additionally, Plaintiff is advised that if he files a Second Amended Complaint, the
10 previous complaints no longer serve any function in this case. As such, the Second Amended
11 Complaint must be complete in and of itself without reference to prior pleadings or other
12 documents. The Court cannot refer to a prior pleading or other documents to make Plaintiff's
13 Second Amended Complaint complete.

14 **II. CONCLUSION**

15 **IT IS THEREFORE ORDERED** Plaintiff's complaint is **DISMISSED** without
16 prejudice.

17 **IT IS FURTHER ORDERED** that if Plaintiff wishes to file an amended complaint, he
18 must do so by April 26, 2024. Failure to comply with this order will result in a recommendation
19 that this case be dismissed.

20 DATED: March 22, 2024

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23 BREND A WEKSLER
24 UNITED STATES MAGISTRATE JUDGE
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